

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 214

THE FLEISCHMANN DISTILLING CORPORATION,  
ET AL., PETITIONERS,

*vs.*

MAIER BREWING COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

No. 17696

**THE FLEISCHMANN DISTILLING CORP., A CORPORATION, etc.,  
Appellants,**

**vs.**

**MAIER BREWING COMPANY, A CORPORATION, et al.,  
Appellees.**

**Transcript of Record**

[fol. 3]

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**SOUTHERN DIVISION**

**Civil Action No. 37340**

**THE FLEISCHMANN DISTILLING CORPORATION,  
a corporation, Plaintiff,**

**vs.**

**MAIER BREWING COMPANY, a corporation, and RALPHS  
GROCERY COMPANY, a corporation, Defendants.**

**COMPLAINT FOR TRADEMARK INFRINGEMENT AND UNFAIR  
COMPETITION—Filed May 20, 1958**

**Plaintiff The Fleischmann Distilling Corporation, a corporation, complains of defendants Maier Brewing Com-**



pany, a corporation, and Ralphs Grocery Company, a corporation, and alleges a claim for relief as follows:

1. This is a civil action between citizens of different states where the matter in controversy exceeds the sum or value of \$3,000, exclusive of interest and costs. This action also arises under Acts of Congress relating to trademarks, particularly the Act of February 20, 1905, 60 Stat. 444, 15 U.S.C. 81-134, and the Act of July 5, 1946, 60 Stat. 427, 15 U.S.C. 1051-1127, and also asserts a related claim of unfair competition.

[fol. 4] 2. Since on and before March 1, 1938, plaintiff The Fleischmann Distilling Corporation, has been and is a corporation duly incorporated and existing under the laws of, and a citizen of, the State of New York.

3. For many years last past defendant Maier Brewing Company, hereinafter called Maier, has been and is a corporation duly organized and existing under the laws of the State of California and is a citizen and resident thereof. It has been doing business under its corporate name and under various fictitious names, including the name A.B.C. Brewing Co.

4. For many years last past Ralphs Grocery Company, hereinafter called Ralphs, has been and is a corporation duly organized and existing under the laws of the State of California and is a citizen and resident thereof.

5. Since on or about August 21, 1903, James Buchanan & Company Limited, hereafter referred to as Buchanan, has been and is a company duly incorporated and existing under the laws of Great Britain, engaged in the business of whisky blender and merchant. Upon its incorporation, it acquired the business of whisky merchants carried on in London, England, under the name of James Buchanan & Co.

6. Buchanan and its predecessors, James Buchanan & Co., at all times herein mentioned have blended, bottled and sold whisky.

[fol. 5] 7. In or about January 1899, James Buchanan & Co., Buchanan's predecessor, commenced designating and labeling its whisky as "Black & White." From January 1899 until August 1903 James Buchanan & Co. continuously used the name "Black & White," and from August 1903 Buchanan has continuously used, and is using, the said name "Black & White."

8. Buchanan's whisky, labeled "Black & White," was first imported into the United States over 53 years ago, in 1904. Continuously, ever since 1904, except for the period of prohibition in the United States, said whisky so labeled has been shipped and imported into the United States from Great Britain in foreign and interstate commerce, and has been shipped and sold in the various states of the United States, including the State of California. All the whisky blended and bottled by Buchanan and sold in the United States and in California is blended and bottled in Great Britain and shipped and sold in interstate and foreign commerce.

9. Since early in 1938 plaintiff has by contract with Buchanan been the exclusive importer into the United States of the whisky blended and bottled by Buchanan and sold under the name "Black & White" and all said whisky sold in the United States is purchased by plaintiff from Buchanan in the United Kingdom and sold by plaintiff or by distributors purchasing from it either directly or from its vendees.

[fol. 6] 10. The name "Black & White" is, and has been for years, the trademark of Buchanan, used as an indication of origin of, and to identify products of Buchanan sold throughout the United States and the State of California, and it is, and during all said times has been, a famous trademark.

11. On March 24, 1908, upon an application filed November 23, 1907, Buchanan registered the words "Black & White" with the U. S. Patent Office, Registration Number